

1. Doe Branch Permit (VA)

Joint SMCRA/NPDES permit (1101946/0081946) Renewal Application Number 1009492:

Doe Branch was originally permitted in September of 2005. In 2006, EPA also approved a TMDL for Russell Prater Creek, which would receive some of the drainage from this mine site when it is activated. Total Dissolved Solids was designated as one of the stressors in the TMDL. In 2009, a major revision was submitted to add over 1000 acres of mining area to the permit. DMLR submitted a draft NPDES permit for Doe Branch to EPA in August 2012 and in September 2012 the EPA issued a General Objection to the issuance of the NPDES permit. EPA followed up with a Specific Objection in November of 2012. DMLR responded to all the comments in the Specific Objection and received no response from EPA. DMLR then issued the joint SMCRA/NPDES permit on 11/25/2013. EPA responded with a letter in December 2013 stating that the Specific Objection was still valid and unresolved, meaning that the permit issued by DMLR was not “valid” according to EPA. To this day, EPA still refuses to lift its Specific Objection.

In June 2014, the EPA confirmed that it met with the Sierra Club and the Southern Appalachian Mountain Stewards (SAMS) concerning Doe Branch. Shortly thereafter, SAMS and Sierra Club filed a complaint with OSM, prompting a Ten Day Notice to VA over the Doe Branch permit and TMDL issues. SAMS and Sierra Club also filed comments against renewal of the Doe Branch permit, forcing DMLR to hold hearings over the application and successive drafts of the permit. The latest draft permit was submitted to EPA on 4/27/2017 and there has been no response. EPA’s Region 3 Office has made coal-related permitting nearly impossible. This is approaching 8 years of wrangling with EPA on this permit.

While all this EPA interference was ongoing on the SMCRA/NPDES permit, we were experiencing the same on the CWA 404 permit. We were successful in finally obtaining a 404 permit but due to the EPA interference, it was extremely expensive, costing many times what a typical CWA 404 permit should have cost to obtain and took way too much time to gain approval. It also contains some very difficult requirements that were added by EPA.

2. Permit Shield, Aluminum and Selenium issues in WV:

We do not currently have any permitting actions that are being held up by EPA’s failure to approve these WVDEP requests, but will soon be submitting a request for alternate Selenium limits at our Power Mountain Coal Refuse Disposal Area. There have also been some recent adverse decisions by Judge Chambers in the Southern District of WV where he relied upon the current WV permit shield language. Had EPA approved the WVDEP request, these outcomes might have been different. The hardness-based aluminum standard would help the industry in

general. The current standard is overly protective.

3. Underdrains as NPDES Discharges (EPA's Information Request under Section 308 of the CWA):

On June 1, Contura received a Section 308 Letter from EPA's Region 3 that was signed by Mr. David B. McGuigan, Associate Director, Office of NPDES Permits and Enforcement. This letter requires that Contura provide an enormous amount of information in a very short timeframe. This information is already in the possession of the Virginia Division of Mined Land Reclamation (VDMLR), the agency with SMCRA and CWA primacy in Virginia's coalfields. This information request centers on the apparent EPA belief that underdrains from valley-fills on surface mines become NPDES point source discharges once the ponds that they drain to are removed, and that the underdrains require a new permitting action once the receiving ponds are removed. The ponds are only removed after a permitting action requesting the ponds' removal is submitted, reviewed and approved by VDMLR. This is a novel EPA approach that is supported by the Sierra Club but not supported by the DMLR which regulates the mining operations and must approve the removal of the ponds. In its 40-year plus history DMLR has never regulated underdrains as NPDES discharges and we are not aware of any State that has primacy to regulate coal operations that so regulates underdrains.

We would like to see this request withdrawn or held in abeyance until the DMLR and EPA's Region 3 Associate Director McGuigan have a scheduled conference call to discuss this issue. They have a call scheduled for June 8.